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No. 600

In the Supreme Court of the United States

OCTOBER TERM, 1969

THOMAS BAMBULAS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner prays that a writ of certiorari be issued to review the judgment of the Supreme Court of Illinois entered in this cause on March 27, 1969.

OPINION BELOW

The opinion of the Supreme Court is reported at ..... Ill. 2d ....., 247 N.E. 2d 873, and is reprinted herein as Appendix A, *infra.*

JURISDICTION

The judgment of the Supreme Court of Illinois (Appendix B, *infra*) was entered on March 27, 1969. A timely petition for rehearing was denied on June 18, 1969 (Appendix C, *infra*). This Petition is filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Does a police officer, who knows that a burglary has occurred in which certain electronic equipment was stolen, and who seven days later sees a truck not belonging to the manufacturer delivering a quantity of that equipment to a residence at 8:30 P.M., have reasonable grounds for believing that the occupants of the truck have committed a crime?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the Constitution provides in pertinent part:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause * * * *"

The Fourteenth Amendment to the Constitution provides in pertinent part:

> "No State shall * * * deprive any person of life, liberty, or property, without due process of law; * * *"

STATEMENT

Petitioner, Thomas Bambulas, was indicted by the Grand Jury of the Circuit Court of Cook County for theft.[1] His

[1] Petitioner and three others were charged in three counts with knowingly obtaining control over 76 television sets and 50 radios intending to deprive the Sony Corporation permanently of the use and benefit of said property, knowingly exerting unauthorized control over said property, and knowingly obtaining control over stolen property knowing said property to have been stolen, all in violation of Illinois Revised Statutes, 1965, Ch. 38, pars. 16-1(a) and (d). (R."D-F")

pre-trial motion to suppress as evidence certain television sets and radios, seized at the time of his arrest, was denied (R. "U"; 88)[2] and, following trial by jury during which these items were introduced, Petitioner was sentenced to the Illinois State Penitentiary for a term of not less than five nor more than ten years.

Evidence at hearing and trial.

At about 9:30 p.m. on June 18, 1965, Chicago police officers observed cartons bearing the lettering "S-O-N-Y" being unloaded from a blue panel truck and taken into a house located in a near southwest-side residential section of the City of Chicago. Petitioner and five other men were arrested in the street near the truck, and seventy-six Sony television sets and fifty radios were seized from the truck and the vicinity around the house. (R. 9-16)

The police had been conducting a surveillance of the area around the house since May 30th because of a "tip" given officer Donald Murray on that date by an unnamed informant that the occupant of the house would receive stolen electric knives and radios there. The surveillance, however, failed to uncover any such transactions. (R. 4-8, 24-26, 36) Murray's only other information from this informant (prior to May 31st) had led to an arrest on which a case was pending at the time of this trial. (R. 33-34)

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[2] "R. ....." references are to the page of the record on appeal filed in the Illinois Supreme Court and certified by that court here. Lettered references are to the pages of the traditional "common law record" made part of the record on appeal. Numbered references are to pages of the transcript of evidence, also made part of that record on appeal.

During the surveillance which followed the information about knives and radios (R. 8), on either June 13th or 14th, the informant met Murray and two other officers and told them that on June 17th merchandise taken in a June 11th burglary of the Sony Corporation was going to be delivered to the house. (R. 36-39) Murray received a police bulletin on June 14th listing the serial and model numbers of walkie-talkies, radios and television sets which had been taken in the burglary. (R. 8-9)

The surveillance of the house continued. (R. 9) On June 17th, while Murray was at the surveillance site, the informant called Murray's office and left a coded message for him which meant that the merchandise was not going to be delivered that night. Murray's office communicated this message to him (R. 39)

Nevertheless, Murray continued the surveillance the following night. He stationed himself in an old car parked about 150 feet south of the house. Six to eight other officers were stationed throughout the area. The panel truck passed Murray as he crouched in the rear seat of his car. He peered into the unlighted, moving truck and observed the profile of the driver, whom he said was the Petitioner. (R. 159-163, 206-210, 254) Murray left his vehicle and proceeded toward the house just before the truck stopped in front of it. From a gangway four houses away, Murray observed through binoculars as the driver went to the rear of the truck and opened the two doors. Other men joined the driver and began to unload cartons which were stacked by the rear door. Through the binoculars, Murray, who admitted he could not "read written letters unless they're quite close" (R. 198-199), saw lettering which "appeared" to be "Sony" on the cartons. (R. 13, 163-164) Murray then called the other police officers and moved to the rear of the house.

(R. 168-169) Other police cars moved to the front, and Petitioner was arrested by officers Giosh and Malicki, who said they saw him by the passenger's door to the truck. (R. 233-235, 250-252) At this time, residents of the area had come out of their houses and were causing a commotion. (R. 252) Murray and the other officers seized cartons containing stolen Sony radios and television sets from the truck, the house and the area at the rear of the house. (R. 169-171)

Ruling of the trial court.

At the conclusion of the motion to suppress the evidence, the trial judge ruled:

> In this case we have the officer testifying that he had a reliable informer that he had information from before that led to an arrest, although there is no conviction yet. * * * Some [cases] are continued and we can't say it is not a good arrest or a bad one but he relied upon it.
>
> We have a burglary of a warehouse with a lot of radios and televisions. We have the place staked out and informed that there is going to be a delivery at this place. He sees a truck come by, it is around 10:00 o'clock at night, I believe. He sees the defendant Bambulas driving the truck. With his binoculars he can see the truck door opened and the men come and unload these cartons. He states that he can see the "Sony" marks on them, and this is out in a public way.
>
> It is most unusual for anybody in a lawful business to be unloading a truckload of something at 10:00 o'clock at night into a residence. *It is probably grounds at that point to suspect it was not absolutely legitimate.* He could see the names on it. They make the arrest and seize the goods. It is in a public street, part of it, and part of it is in the back. I think it is incidental to a lawful arrest. Therefore, I am going to deny your motion to suppress. (R. 87-88; emphasis added.)

Following his conviction, Petitioner appealed directly to the Illinois Supreme Court,[3] alleging, *inter alia,* that his rights under the Fourteenth Amendment to the Constitution had been violated by the search and seizure and admission into evidence of the radios and television sets. He contended the police lacked probable cause to make an arrest in that Officer Murray's unnamed informant had not been shown to be reliable, and that the trial court improperly allowed the prosecution to withhold identification of this informant at the hearing on the motion to suppress. (R. 23)

Decision of the Illinois Supreme Court.

The Illinois Supreme Court held:

> There is no need here to consider whether the informer was proven reliable * * * * Here, the arresting officers had knowledge * * * that a burglary had occurred in which Sony equipment was stolen and they saw a truck bearing a name other than "Sony" delivering a large quantity of Sony equipment to a residence at 8:30 P.M. In the light of the officer's knowledge and their observation, they had reasonable grounds for believing that the defendant had committed a felony * * * * (App. A, *infra,* pp. 3-4)

[3] In Illinois, the Supreme Court has jurisdiction to review a criminal case directly (other than when the death sentence has been imposed) only where a fairly debatable constitutional question is raised. Constitution of the State of Illinois, Art. VI, Sec. 5. See, Illinois Supreme Court Rule 603, Ill. Rev. Stat., 1967 Ch. 110A, § 603; People v. De Filippis, 57 Ill. App. 2d 137, 203 N.E.2d 627 (1965).

REASONS FOR GRANTING THE WRIT

Despite the fact that the trial court had relied on the information given Officer Murray by his unnamed informant in arriving at a finding of probable cause (R. 87), the Illinois Supreme Court held that the information given the officer from this source could be ignored and that the arrest, search and seizure which followed could be sustained on the basis of the officer's own personal knowledge and observations. (App. A, *infra*, pp. 3-4) This disposition of the issues, prompted apparently by the informant's patent unreliability and the failure of the informant to disclose how he came about his information or even whether it was within his personal knowledge (Cf. *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Spinelli* v. *United States*, ... U.S. ....., 89 S.Ct. 584 (1969)), and further prompted by the fact that, under these circumstances, the trial court could not constitutionally permit the prosecution to withhold identification of the informant (See, *People* v. *Johnson*, 68 Cal.Rptr. 441 (1968); cf. *McCray* v. *Illinois*, 386 U.S. 300, 305 (1967)), raises further issues along the line of *Henry* v. *United States*, 361 U.S. 98 (1959) concerning the validity of an arrest based on suspicion.

The trial judge had observed that what Murray saw that night was "probably grounds * * * to suspect it was not absolutely legitimate." (R. 87) He, of course, felt that this observation buttressed what Murray had been told by the informant, and that the two sources of information, together, gave Murray probable cause to make an arrest. But it is clear that the observations of Murray alone were considered no more effective than to raise a suspicion. *Henry*, in which the agents knew of a theft of whiskey, saw the defendants drive from a tavern in the neighborhood of the theft to an alley in a residential section where

they loaded cartons in their car, later saw the car in front of the same tavern, observed the car driven back to the alley where more cartons were loaded, and finally heard the defendants make a known false statement concerning their association, prohibited arrests based upon such suspicion. As this Court said in *Beck* v. *Ohio,* 379 U.S. 89, 97 (1964):

> " * * * 'good faith on the part of the arresting officer is not enough.' * * * If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police."

While Officer Murray knew of the burglary at Sony seven days earlier, he had no reason to believe that the occupants of the truck had participated in it, or that the cartons which he saw represented its proceeds. Moreover, absent the information from his informant (which the Illinois Supreme Court has disregarded), Murray had no reason to suspect the occupants of, or visitors to the house he was watching. Like *Henry,* merely seeing a truck carrying cartons under suspicious circumstances, would not warrant a "reasonably prudent man" in believing that the cartons were the proceeds of a burglary. The decision of the Illinois Court has, in effect, ignored these factors.

CONCLUSION

For the above and foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

CHARLES A. BELLOWS
Attorney for Petitioner

JASON E. BELLOWS
SHERMAN C. MAGIDSON
on the brief

APPENDIX

APPENDIX A

Docket No. 40621—Agenda 9—September, 1968.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, vs.

THOMAS BOMBALIS, Appellant.

MR. JUSTICE KLUCZNIK delivered the opinion of the court:

The defendant, Thomas Bombalis, was tried by jury in the circuit court of Cook County and convicted of the crime of theft for which he was sentenced to the penitentiary for a term of not less than five nor more than ten years. He has appealed to this court and a substantial constitutional question gives us jurisdiction on direct appeal.

The defendant contends that evidence that evidence obtained by an unreasonable and illegal search without an arrest or search warrant was admitted in evidence against him. The facts relating to the search and the events preceding it are as follows. Police Officer Donald Murray testified that prior to May 30, 1965, he had had two conversations with an unnamed informer. One of these conversations resulted in the arrest and indictment of Robert Hanahan. At the time of the defendant's trial Hanahan had not been tried. In the other conversation the informant told him that the owner of a house at 4310 South Keating in Chicago was receiving stolen merchandise and that the merchandise consisted of some electric knives and some radios. Acting upon this information, the police placed the house under surveillance. They never saw any such merchandise delivered to the house and never applied for a search warrant. In the eventual search of the house which is involved in this case, no knives or radios were discovered. The house remained under surveillance from May 30 until

they loaded cartons in their car, leave the car in front of the same tavern, observed the car driven back to the alley where more cartons were loaded, and finally heard the defendants make a known false statement concerning their association, prohibited arrests based upon such unreasonable

As this Court said in *Beck* v. *Ohio*, 379 U.S. 89, 91, (1964):

> " * * * 'good faith' on the part of the arresting officer is not enough. * * * If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be secure in their persons, houses, papers, and effects, only in the discretion of the police."

While Officer Murray knew of the burglary several days earlier, he had no reason to believe that the occupants of the truck had participated in it or that the cartons which they were loading contained the proceeds. Moreover, absent the information from his informant (who in the Illinois Supreme Court has disregarded), Murray had no reason to suspect the occupants of, or visitors to the house he was watching. Like *Henry*, merely seeing a truck carrying cartons under suspicious circumstances, would not warrant a "reasonably prudent man" in believing that the cartons were the proceeds of a burglary. The decision of the Illinois Court has, in effect, ignored these factors.

CONCLUSION

For the above and foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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on the brief

APPENDIX

APPENDIX A

Docket No. 40217—Agenda 9—September, 1968.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, *vs.*
THOMAS BAMBULAS, Appellant.

MR. JUSTICE KLINGBIEL delivered the opinion of the court:

The defendant, Thomas Bambulas, was tried by jury in the circuit court of Cook County and convicted of the crime of theft for which he was sentenced to the penitentiary for a term of not less than five nor more than ten years. He has appealed to this court and a substantial constitutional question gives us jurisdiction on direct appeal.

The defendant's constitutional claim is that evidence obtained by an unreasonable and illegal search without an arrest or search warrant was admitted in evidence against him. The facts relating to the search and the events preceding it are as follows: Police Officer Donald Murray testified that prior to May 30, 1965, he had had two conversations with an unnamed informer. One of these conversations resulted in the arrest and indictment of Robert Hanahan. At the time of the defendant's trial Hanahan had not been tried. In the other conversation the informant told him that the owner of a house at 4310 South Keating in Chicago was receiving stolen merchandise and that the merchandise consisted of some electric knives and some radios. Acting upon this information, the police placed the house under surveillance. They never saw any such merchandise delivered to the house and never applied for a search warrant. In the eventual search of the house which is involved in this case, no knives or radios were discovered. The house remained under surveillance from May 30 until

June 18. During this period Officer Murray received an official bulletin advising of a burglary at a warehouse of the Sony Corporation, in which television sets and radios had been stolen, and listing the serial numbers and model numbers of the stolen merchandise. On the 13th or 14th day of June, the informer told Officer Murray that some Sony television sets and radios which had been stolen in the burglary would be delivered to the Keating address and that he thought the delivery was going to be made on the 17th. On the 17th the officer received word that the informant had called the station and requested the officer to call him back. The officer testified that this was a pre-arranged code which advised him that the delivery was not going to be made on the 17th. On the 18th of June, while the officer was in a parked car about 100 feet from the Keating address, he saw a panel truck bearing the name "United Vending Company, Berwyn, Illinois," drive past his car and stop in front of the house. He identified the defendant as the driver of the truck. The officer continued his observation with binoculars and saw several men come out to the truck from the vicinity of the house where they started to unload the truck. The officer testified that he saw a number of cartons in the truck and that they appeared to have the name "Sony" on them. The officer and other police officers who were stationed in the vicinity then closed in on the house and arrested the defendant and five other men, and seized seventy-six Sony television sets and fifty Sony radios, which were later identified by an officer of Sony as part of the proceeds of the Sony burglary.

With this factual background, we must decide whether the search violated the constitutional provisions against unreasonable searches and seizures. As usual in such cases, the law is well settled and the difficulty is in applying the law to the facts. The constitution does not prohibit all

searches and seizures, but only those which are unreasonable and without probable cause. (*People* v. *Brown,* 38 Ill.2d 353.) A search without a search warant may be valid if incident to a lawful arrest (*People* v. *Davis,* 34 Ill.2d 38) and a lawful arrest may be made without an arrest warrant if the officers making the arrest had probable cause to make it. (*Beck* v. *Ohio,* 379 U.S. 89, 13 L. Ed. 2d 142, 85 S. Ct. 223.) The test of probable cause is whether a reasonable and prudent man in possession of the knowledge which has come to the arresting officer would believe the person to be arrested is guilty of the crime. (*People* v. *Macias,* 39 Ill.2d 208, 213.) Probable cause may be based upon information supplied by an informant if the reliability of the informant has been previously established or independently corroborated. (*People* v. *McClellan,* 34 Ill.2d 572, 574.) However, mere suspicion, common rumor, or report do not afford probable cause for arrest. *People* v. *Jones,* 31 Ill.2d 42, 47.

There is no need here to consider whether the informer was proven reliable for, without regard to whether a police officer has received information from an informer, an arrest may be made when the arresting officer has reasonable grounds to believe that the person arrested has committed a felony. (*People* v. *Rossolille,* 38 Ill.2d 316, 320.) In *People* v. *McCracken,* 30 Ill.2d 425, the arresting officer had knowledge that a series of burglaries had occurred in a certain area. As he and his partner were patrolling the area they saw the defendant emerge from an alley, carrying a bundle. The defendant fled when he saw the police, but was overtaken, arrested, and searched. This court upheld the search on the grounds that the officer had reasonable grounds for believing that the defendant had committed a felony. Here, the arresting officers had knowledge through official police channels that a burglary had occurred in which Sony equipment was stolen and they saw a truck

bearing a name other than "'Sony" delivering a large quantity of Sony equipment to a residence at 8:30 P.M. In the light of the officers' knowledge and their observation, they had reasonable grounds for believing that the defendant had committed a felony and the arrest and search were lawful.

Defendant also argues that the evidence was insufficient to establish his guilt. He admits that stolen property was being moved into the house from the truck and admits that he was arrested at the scene, but argues that he was an innocent bystander on his way home from work, and was attracted to the premises by the confusion. Defendant was identified as the driver of the truck and was seen reaching into the truck after it had stopped. Although defendant attacks the identification testimony on the grounds of inadequate lighting, inadequate opportunity to observe, and alleged discrepancies in the testimony, we think it is clear that these matters involved only a question of credibility, which was for the jury to determine. Defendant also makes much of the fact that he was first seen with a hat and gloves, but was not wearing these items when he arrived at the police station. This fact was brought out before the jury and again only raises a question of credibility. We are of the opinion that the evidence was sufficient to establish defendant's guilt.

In rebuttal, for the purpose of impeaching Sam Martin, a defense witness, the State offered a certified copy of a judgment of conviction showing that a Sam Martin had been convicted of armed robbery. The defendant objected on the ground that there was no proof that the witness was the same person as the Sam Martin named in the copy of the judgment, but the court overruled the objection. It has long been settled in this State that where the name of the witness is the same as the name of the person convicted,

the record is admissible without first identifying the witness as the person convicted, since that fact will be presumed. (*People* v. *Buford,* 396 Ill. 158; *People* v. *Lawson,* 331 Ill. 380, 392.) Defendant recognizes this rule but urges us to overrule these cases. We are satisfied that the rule is correct and we adhere to it. The trial court did not err in admitting the exhibit without proof of identity.

The defendant further argues that the court permitted the State to introduce improper evidence as to the reputation of the witness, Sam Martin. A police officer testified that he had talked to some of Martin's friends, but had not talked to any of his employers, business associates or neighbors. The prosecutor expressed surprise at this testimony and a hearing was held outside the presence of the jury. The judge stated that he would sustain an objection to further inquiry as to Martin's reputation. Thereafter, in the presence of the jury, the prosecutor asked if the officer knew the reputation of Martin for truth and veracity; defendant's counsel objected, the court sustained the objection and, on counsel's motion, ordered the testimony stricken. The officer did not establish that he had the requisite knowledge to give an opinion as to Martin's reputation and the judge correctly ruled that he could not testify on this question. The prosecutor should not have insisted on asking the question, knowing that the court would sustain an objection thereto, but the error could not have affected the outcome of this case.

The defendant's final contention is that the prosecutor's argument was prejudicial. Much of the argument now under attack was not objected to in the trial court and will not be considered here. (*People* v. *Winters,* 29 Ill.2d 74, 80.) The only remark which was objected to was the prosecutor's statement that "We would not put a case before you unless it was a strong case." In response to the

objection the court stated, "I didn't hear the remark. The jury will follow the evidence in the case." The argument was not of such a nature as to deprive the defendant of a fair trial.

The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

MR. JUSTICE WARD took no part in the consideration or decision of this case.

APPENDIX B

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

AT A TERM OF THE SUPREME COURT, *begun and held in Springfield, on Monday, the* tenth *day of* March *in the year of our Lord, one thousand nine hundred and* sixty-nine, *within and for the State of Illinois.*

PRESENT: ROY J. SOLFISBURG, JR., CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFFER
JUSTICE BYRON O. HOUSE
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE RAY I. KLINGBIEL
JUSTICE ROBERT C. UNDERWOOD
JUSTICE DANIEL P. WARD

WILLIAM J. SCOTT, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHALL
ATTEST: JUSTIN TAFT, CLERK

Be It Remembered, *that, to-wit: on the* 27th *day of* March 1969, *the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:*

PEOPLE STATE OF ILLINOIS,
Appellee,

No. 40217 vs.

THOMAS BAMBULAS,
Appellant.

Appeal from Circuit Court Cook County
(Criminal Division) 66 - 508

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment *aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.*

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Cook County (Criminal Division) *aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.*

APPENDIX C

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

AT A TERM OF THE SUPREME COURT, *begun and held in Springfield, on Monday, the* twelfth *day of* May *in the year of our Lord, one thousand nine hundred and* sixty-nine, *within and for the State of Illinois.*

PRESENT: ROY J. SOLFISBURG, JR., CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFFER
JUSTICE BYRON O. HOUSE
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE RAY I. KLINGBIEL
JUSTICE ROBERT C. UNDERWOOD
JUSTICE DANIEL P. WARD
WILLIAM J. SCOTT, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHALL
ATTEST: JUSTIN TAFT, CLERK

BE IT REMEMBERED, that, to-wit: on the 18th day of June, A.D. 1969, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE STATE OF ILLINOIS, *Appellee,*

No. 40217 vs.

THOMAS BAMBULAS, *Appellant.*

Appeal from Circuit Court Cook County
(Criminal Division) 66 - 508

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.